

1947

*Present : Howard C.J. and Soertz S.P.J.*

ANGO NONA, Appellant, and MUTHTHIRULAPPA PILLAI,  
*et al.*, Respondents.

*S. C. 214—D. C. Negombo, 6,532*

*Mortgage decree—Sale by auctioneer—Sale below appraised value—Legality of sale.*

Where, in execution of a mortgage decree, the Judge directed that the property should not be sold below the appraised value—

*Held*, that a sale below such value was without legal authority and should not be confirmed.

**A**PPEAL from a judgement of the District Judge, Negombo.

*H. V. Perera, K.C.* (with him *D. S. L. P. Abeysekera* and *Vernon Wijetunge*), for the first defendant, appellant.

*N. E. Weerasooria, K. C.* (with him *Naina Marikkar* and *W. D. Gunasekera*), for the substituted plaintiffs, respondents.

*S. J. V. Chelmayagam, K.C.* (with him *N. Nadarasa*), for the purchaser, respondent.

October 10, 1947. HOWARD C.J.—

This was a mortgage action in which the mortgagee had got judgement for a sum of Rs. 9,010 with interest on Rs. 6,000 at 11 per cent. There had been due to the plaintiff payments amounting to Rs. 15,562·36½. An application was made for the sale of the property and the District Judge directed that each lot of land should not be sold below the appraised value. By an oversight the auctioneer sold lots 3, 5, 6, 7, 8, 10, 11 below the appraised value. When the matter was brought to the notice of the District Judge he appeared to take the view that he had no power to lay down such a condition as a term of the sale and he therefore confirmed all the sales. We think that the sale of these particular lots was made by the auctioneer without legal authority and therefore it cannot stand. We therefore set aside the order of the District Judge confirming the sales of these particular lots. We direct that the appellant should have the costs of this appeal and half the costs of the application in the lower Court.

SOERTSZ S.P.J.—I agree.

*Order set aside.*

